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# State v. Sloniker Appellant's Brief Dckt. 44691

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IN THE SUPREME COURT OF THE STATE OF IDAHO

|                       |   |                   |
|-----------------------|---|-------------------|
| STATE OF IDAHO,       | ) |                   |
|                       | ) | NO. 44691         |
| Plaintiff-Respondent, | ) |                   |
|                       | ) | KOOTENAI COUNTY   |
| v.                    | ) | NO. CR 2016-4549  |
|                       | ) |                   |
| KEVIN G. SLONIKER,    | ) | APPELLANT'S BRIEF |
|                       | ) |                   |
| Defendant-Appellant.  | ) |                   |
| _____                 | ) |                   |

STATEMENT OF THE CASE

Nature of the Case

Kevin G. Sloniker was sentenced to life imprisonment, with 35 years fixed, after he pled guilty to, and was convicted of, seven counts of lewd conduct with a child under sixteen years old. The district court abused its discretion when it imposed this sentence upon Mr. Sloniker considering the mitigating factors that exist in this case. Mr. Sloniker deserves a term of imprisonment, but his criminal offenses do not mean he should remain in prison until he is at least 65 years old. His sexual offenses stemmed from his own victimization (sexual and otherwise) and there is every indication that, with rehabilitation and supervision, he would not present a danger to society.

## Statement of Facts and Course of Proceedings

In April 2015, the Coeur d'Alene Police Department began investigating allegations of lewd conduct by Mr. Sloniker. (Presentence Investigation Report ("PSI"), p.78.) Mr. Sloniker was ultimately charged by Information with seven counts of lewd conduct with a minor under sixteen years old, each count pertaining to a different male victim, ranging in age from eight to fourteen years old, over a ten-year period.<sup>1</sup> (R., pp.33-36; 10/28/16 Tr., p.43, Ls.2-19; PSI, pp.2-4.) Mr. Sloniker cooperated fully in the investigation, accepted responsibility, and pled guilty to all seven counts. (PSI, p.78; 3/9/16 Tr., p.15, L.10 – p.16, L.5)

At sentencing, the prosecutor described Mr. Sloniker as "a trafficker in human misery" and stated that "[s]ociety expects a life sentence on this." (10/26/16 Tr., p.15, Ls.21-23.) He recommended a fixed life sentence on each count. (10/28/16 Tr., p.12, Ls.23-25.) Defense counsel pointed out Mr. Sloniker's "extreme social naïveté" and noted all the presentence materials reflect that Mr. Sloniker's "growth and development [were] incredibly stunted." (10/28/16 Tr., p.31, Ls.15-21.) Counsel recommended a unified sentence on each count of fifteen years, with seven years fixed. (10/28/16 Tr., p.40, Ls.6-8.) Mr. Sloniker apologized for his conduct and accepted full responsibility, stating he was "not proud" and was "ashamed of [himself]." (10/28/16 Tr., p.41, Ls.9-24.) The district court sentenced Mr. Sloniker to life imprisonment, with 35 years fixed, on each count, to be served concurrently. (10/28/16 Tr., p.47, L.25 –

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<sup>1</sup> The Information combined two earlier cases and added charges relating to three additional victims. (3/9/16 Tr., p.8, Ls.2-13.) The prosecutor told the district court he intended to dismiss without prejudice the two earlier cases. (3/9/16 Tr., p.8, Ls.5-18.)

p.48, L.12.) The judgment was entered on October 28, 2016, and Mr. Sloniker filed a timely notice of appeal on November 29, 2016. (R., pp.68-72, 73-76.)

### ISSUE

Did the district court abuse its discretion when it imposed upon Mr. Sloniker a term of life imprisonment, with 35 years fixed, considering the mitigating factors that exist in this case?

### ARGUMENT

#### Considering The Mitigating Factors That Exist In This Case, The District Court Abused Its Discretion When It Imposed Upon Mr. Sloniker A Term Of Life Imprisonment, With 35 Years Fixed

Mr. Sloniker asserts that, given any view of the facts, his sentence of life imprisonment, with 35 years fixed, is excessive. Where, as here, the sentence imposed by the district court is within statutory limits, “the appellant bears the burden of demonstrating that it is a clear abuse of discretion.” *State v. Miller*, 151 Idaho 828, 834 (2011) (quoting *State v. Windom*, 150 Idaho 873, 875 (2011)). “When a trial court exercises its discretion in sentencing, ‘the most fundamental requirement is reasonableness.’” *Id.* (quoting *State v. Hooper*, 119 Idaho 606, 608 (1991)). “A sentence is reasonable if it appears necessary to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation or retribution.” *Id.* (citation omitted). “When reviewing the reasonableness of a sentence this Court will make an independent examination of the record, ‘having regard to the nature of the offense, the character of the offender and the protection of the public interest.’” *Id.* (quoting *State v. Shideler*, 103 Idaho 593, 594 (1982)).

The sentence imposed upon Mr. Sloniker was not reasonable given the nature of his offenses, his character, and the protection of the public. The offenses Mr. Sloniker committed were serious, and will have long-lasting negative implications for each of the seven victims. But these offenses cannot be examined in isolation. At his sentencing, Mr. Sloniker said he “wasn’t looking for victims, but for friends.” (10/28/16 Tr., p.41, Ls.14-16.) At the time of his arrest, Mr. Sloniker was living with one of his victims, which seems to support his distorted view that his conduct stemmed from friendship, not abuse. (PSI, p.14.) Though his thinking was distorted, it did not warrant the sentence imposed.

The district court did not adequately consider Mr. Sloniker’s character and life history when imposing its sentence. Mr. Sloniker was raised in an extremely isolated area, and experienced social and psychological isolation in addition to geographic isolation. (PSI, p.80.) He was one of twelve children, and was home schooled from kindergarten through twelfth grade by his disabled mother, who lacked any formal educational (or other) training. (PSI, p.80.) For most of his childhood, Mr. Sloniker had little or no contact with people outside his immediate family, and a church community at the very fringe of the Catholic faith. (PSI, pp.78, 84.) His development was negatively impacted by his social isolation and by exposure to sexual abuse from his siblings. (PSI, pp.5-6, 78.) Despite the challenges of his childhood, he was gainfully employed as a truck driver at the time of his arrest, and has never abused alcohol or used illegal drugs. (PSI, pp.10, 13.) Family members described Mr. Sloniker as kind, generous, and helpful, and when asked during the presentence investigation what was important to him, Mr. Sloniker answered, “[t]he Bible and helping others.” (PSI, pp.10, 86.)

Mr. Sloniker is in need of punishment, certainly, but he is also in need of understanding and, more importantly, help.

The sentence imposed upon Mr. Sloniker was also not necessary to protect the public. Mr. Sloniker had never faced criminal charges before this case. (PSI, pp.4-5, 13.) He did not understand the impact his actions were having on his victims and seemed to think he was making friends. (PSI, p.11.) Mr. Sloniker participated in a psychosexual evaluation, and was determined to present a high risk of sexual recidivism. (PSI, p.140.) But the licensed psychologist who conducted the evaluation concluded, “[Mr. Sloniker’s] test results suggest he may potentially be a suitable treatment candidate.” (PSI, p.139.) The psychologist suggested that, if Mr. Sloniker was placed on probation, he should not have unsupervised conduct with males under the age of eighteen; should not purchase, possess, or view pornography; and should participate in outpatient sex offender treatment and undergo periodic polygraph examinations. (PSI, p.140.) These are reasonable conditions that could have been put in place to protect the public after a far shorter term of incarceration.

Considering the mitigating factors that exist in this case, and notwithstanding the aggravating factors, the district court abused its discretion when it sentenced Mr. Sloniker to life imprisonment, with 35 years fixed, meaning he will be incarcerated until he is at least 65 years old.

### CONCLUSION

Mr. Sloniker respectfully requests that this Court reduce his sentence as it deems appropriate. Alternatively, he requests that this case be remanded to the district court for a new sentencing hearing.

DATED this 2<sup>nd</sup> day of May, 2017.

\_\_\_\_\_/s/\_\_\_\_\_  
ANDREA W. REYNOLDS  
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 2<sup>nd</sup> day of May, 2017, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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CYNTHIA KC MEYER  
DISTRICT COURT JUDGE  
E-MAILED BRIEF

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E-MAILED BRIEF

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DEPUTY ATTORNEY GENERAL  
CRIMINAL DIVISION  
E-MAILED BRIEF

\_\_\_\_\_/s/\_\_\_\_\_  
EVAN A. SMITH  
Administrative Assistant

AWR/eas